

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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Docket No. 175,026

ORDER

Claimant requests review of the Award of Administrative Law Judge John D. Clark entered in this proceeding on February 2, 1995. The Appeals Board heard oral argument June 1, 1995, in Wichita, Kansas.

APPEARANCES

The claimant appeared by his attorney, Jim Lawing of Wichita, Kansas. The respondent and its insurance carrier appeared by their attorney, Vaughn Burkholder of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, Orvel Mason of Arkansas City, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board is enumerated in the Award of the Administrative Law Judge.

STIPULATIONS

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Administrative Law Judge found claimant entitled to Workers Compensation Benefits for a ten percent (10%) loss of use to the right arm. Claimant requested this review and contends he is entitled benefits for a nonscheduled injury because the left arm was also injured. The sole issue now before the Appeals Board is nature and extent of disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, the Award of the Administrative Law Judge should be affirmed.

Claimant alleges he developed bilateral carpal tunnel syndrome in July 1992 as a result of working for the respondent. Claimant ultimately obtained bilateral carpal tunnel releases in January 1993, and now contends he has sustained a significant work disability as a result of these injuries and argues he is entitled to permanent partial disability benefits under K.S.A. 1992 Supp. 44-510e for a nonscheduled injury.

Claimant bears the burden of proof to establish his claim. Burden of proof is defined in K.S.A. 44-508(g) as " . . . the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." The burden of proof is:

" . . . on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." K.S.A. 44-501(a).

Based on the record as a whole, the claimant has failed to prove that it is more probably true than not that he injured his left arm or hand as a result of working for respondent. The medical evidence fails to establish claimant's left arm problems were related to his work activities. Claimant's first treating physician, board certified orthopedic surgeon Harry Morris, M.D., testified claimant did not complain of problems with the left hand and wrist until October 7, 1992, when claimant had been off work approximately six (6) weeks. Doctor Morris testified he felt the symptoms in the left hand and arm were not related to claimant's work with respondent.

Claimant's second treating physician, board eligible orthopedic surgeon James L. Gluck, M.D., testified he did not determine from claimant when the symptoms in the left upper extremity began. However, the doctor also said that if claimant had been off work since August 25, 1992, but did not complain of symptoms in the left upper extremity until October 7, those facts would indicate the symptoms were not work-related.

Utilizing the AMA Guides, Dr. Morris testified that claimant has sustained a ten percent (10%) functional impairment to the right upper extremity as a result of his work-related injuries. The Appeals Board adopts that opinion of functional impairment. Based upon the expert opinion provided, the Appeals Board finds that claimant has proven work-related injury to the right arm only for which he is entitled benefits.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark entered in this proceeding on February 2, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

A significant portion of claimant's job was bucking rivets. Before leaving work for medical treatment, claimant began using his left hand more to protect the right. Claimant testified he was experiencing symptoms in both hands when he first saw Dr. Morris on August 25, 1992.

Claimant's testimony, coupled with common sense, supports the conclusion that the injury and overuse syndrome in the left hand occurred simultaneously with the overuse injury to the right hand and was caused by the repetitive and forceful nature of claimant's work.

Therefore, we disagree with the majority opinion and believe claimant is entitled benefits for a "non-scheduled" injury.

BOARD MEMBER

BOARD MEMBER

- c: Jim Lawing, Wichita, Kansas
 Vaughn Burkholder, Wichita, Kansas
 Orvel Mason, Arkansas City, Kansas
 John D. Clark, Administrative Law Judge
 George Gomez, Director